DOCUMENT RESUME

ED 340 128 EA 023 574

AUTHOR Sheane, Kim; Bierlein, Louann
TITLE Open Enrollment/Educational Choice: A National Review.
INSTITUTION Arizona State Univ., Tempe. Morrison Inst. for Public Policy.
PUB DATE Oct 91
NOTE 56p.; A chart summarizing appendix A may not reproduce well in paper copy.
PUB TYPE Reports - Descriptive (141)

EDRS PRICE MF01/PC03 Plus Postage.
DESCRIPTORS *Admission (School); Elementary Secondary Education; Free Choice Transfer Programs; *Nontraditional Education; *Open Enrollment; Private School Aid; *School Choice; School Restructuring; State Action; *State Programs
IDENTIFIERS *Arizona

ABSTRACT

Descriptive information on open enrollment/choice programs in a variety of states is provided in this report. Following an introduction, key program components are discussed, which include transportation, information, and funding issues; state guidelines for student acceptance; and athletic recruiting. Private school issues are examined in the third section, such as state oversight, legal issues, and the financial impact of including private school students. The final section describes diversification and other choice issues, such as magnet and charter schools and plans for high school/postsecondary enrollment options. Appendices contain a data matrix and program descriptions of 10 states with formally implemented open enrollment/choice provisions--Arizona, Colorado, Idaho, Iowa, Minnesota, Nebraska, Ohio, Utah, Washington, and Wisconsin; descriptions of informally implemented programs in Arizona, Alabama, Massachusetts, Missouri, Oregon, and Vermont; a legal briefing on constitutional issues regarding sectarian schools; and a description of Minnesota's 1991 Outcomes Based "Charter" Schools program. (LMI)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

OPEN ENROLLMENT/ EDUCATIONAL CHOICE:

A National Review

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

L. Bierlein

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EA 023 574

BEST COPY AVAILABLE

OPEN ENROLLMENT/ EDUCATIONAL CHOICE:

A National Review

By

Kim Sheane
and
Louann Bierlein, Ed.D.

Morrison Institute for Public Policy
School of Public Affairs
Arizona State University
October 1991

Table of Contents

INTRODUCTION 1

Overview of Report 1

KEY PROGRAM COMPONENTS 2

Transportation Issues 3

State Guidelines for Student Acceptance 4

Information Issues 5

Athletic Recruiting 5

Funding Issues 5

PRIVATE SCHOOL ISSUES 7

State Oversight 7

Legal Issues 8

Financial Impact of Including Private School Students 8

DIVERSIFICATION AND OTHER CHOICE ISSUES 8

Magnet Schools 8

Charter Schools 9

High School/Post-Secondary Enrollment Option Plans 9

SUMMARY 10

APPENDICES

Appendix A

Matrix ..... A - 1

Arkansas ..... A - 3

Colorado ..... A - 5

Idaho ..... A - 7

Iowa ..... A - 9

Minnesota ..... A - 13

Nebraska ..... A - 15

Ohio ..... A - 19

Utah ..... A - 21

Washington ..... A - 23

Wisconsin ..... A - 25

Appendix B

Arizona Activities ..... B - 1

Alabama ..... B - 2

Massachusetts ..... B - 2

Missouri ..... B - 3

Oregon ..... B - 3

Vermont ..... B - 3

Appendix C

Legal Briefing: Constitutional Issues Regarding Sectarian Schools ..... C - 1

Appendix D

Minnesota's Outcomes Based "Charter" Schools--1991 ..... D - 1

This paper was initially prepared for use by Arizona's Task Force on Educational Reform (August 1991). The goal of the paper was to detail the various open enrollment/choice programs within other states, not debate the merits of the issue. Since the paper provides an extensive analysis of programs within 10 other states, in addition to a summary of dual enrollment and other choice options, it was believed that the paper may be of interest to others outside Arizona. The authors welcome any comments, corrections, or updates as appropriate.

OPEN ENROLLMENT/EDUCATIONAL CHOICE: A NATIONAL REVIEW

INTRODUCTION

Providing parents and/or students with additional opportunities to choose their school continues to be the focus of national and state debate. *Open enrollment* is commonly used to define the freedom to move within a school district (intradistrict) and freedom to move between districts (interdistrict). *Educational choice* is used in a parallel structure in that parents and/or students will have additional "choices" both within the public and private school structure. The issue has become very controversial both within Arizona and across the nation. The following highlights the debate:

Proponents generally say:

- Open enrollment/choice is a way to achieve equal educational opportunity for poor and minority youngsters.
- Open enrollment/choice can rescue children from bad schools.
- Competition for students and money will force schools to improve.
- Children have different learning needs and, therefore, need different teaching options.
- By choosing a school, parents will be more involved in their child's education.
- Open enrollment/choice can promote voluntary desegregation.
- Open enrollment/choice will force schools/districts to streamline their bureaucracies.

Opponents generally say:

- There is no convincing evidence that competition will improve schools or pupil achievement.
- The children most in need -- those without supportive, capable parents -- will likely be left with the worst choices.
- Open enrollment/choice will work against low-income families unless transportation is provided; money spent on buses could be better spent in classrooms.
- Open enrollment/choice that involves private schools will drain money from already needy public schools.
- Open enrollment/choice is a red herring that will divert the public's attention from the need to put more money into public schools.
- Encouraging student transfers will undercut efforts to increase school-community ties.

Overview of Report

This report will *not* debate the merits of the above arguments, but instead presents a close look at 10 states which have *formally* implemented open enrollment/educational choice provisions as of spring, 1991.[1] The goal is to provide state policymakers with descriptive information on various program components for use as they consider designing similar programs. To that end, individual state profiles are presented, in addition to a matrix which allows for a comparison of key components.

---

[1] *Several other states have had existing choice provisions; therefore, the "definitive" listing of open enrollment states tends to vary with every report or article written on this topic.*

Information was obtained via phone interviews with a minimum of two people per state who had a role in that state's program. Generally, legislative and department of education staff were contacted; but, occasionally, the legislator who introduced the measure was also interviewed. Written materials from each state were also reviewed, including copies of the actual legislation and other summary reports. Each individual briefing follows a similar format and provides factual information as well as comments derived from the interviews (found in Appendix A). It should be noted that this report does not include the intimate details of each state's plan; instead, it represents a general summary. Every attempt has been made to verify the accuracy of the information.

Prior to focusing on individual components, the following list summarizes the voluntary or mandatory nature of programs in those states profiled in this report. This aspect is important since the "mandatory" nature of a program has frequently resulted in the need for more detailed program components within law.

State	Intradistrict		Interdistrict	
Arkansas	voluntary	(existing)	voluntary	(1989-90)
Colorado	mandatory	(1990-91)	voluntary pilot	(1990-91)
Idaho	voluntary	(existing)	voluntary	(1991-92)
Iowa	voluntary	(1989-90)	mandatory	(1989-90)
Minnesota	voluntary	(existing)	mandatory	(1990-91)
Nebraska	voluntary	(existing)	mandatory	(1993-94)
Ohio	mandatory	(1993-94)	"restricted" voluntary	(1993-94)
Utah	voluntary	(1990-91)	voluntary	(1990-91)
Washington	voluntary	(1990-91)	"restricted" mandatory	(1990-91)

Wisconsin (Milwaukee only) -- voucher for nonsectarian private schools in district (1990-91)

Several other states also have "informal" open enrollment/choice provisions whereby their existing statutes either have *allowed* student transfers for many years or provide limited transfers under only specific circumstances. For example, Arizona statutes allow both intra- and interdistrict movement, while Vermont's law states that students located in a school district without an elementary and/or high school may be tuitioned to a public or state-approved nonsectarian private school. Alabama permits intradistrict "schools of choice" that promote greater choice in educational programs, while Massachusetts has implemented a voluntary interdistrict choice option. Since Missouri has no formal legislation regarding intra- and interdistrict choice, each district can establish its own policy. Oregon has a limited choice option for students that require additional support as determined through a new state assessment system, while Kentucky allows students to move to another school in the event that their school is declared to be a "school in crisis." Additional details on provisions within these states are provided in Appendix B. Several states have also implemented dual high school/higher education enrollment programs as a means to provide additional choices. These programs are highlighted in "Diversification and Other Choice Issues."

KEY PROGRAM COMPONENTS

Many debates on the topic of open enrollment/choice have focused on the individual program components and concerns over how to develop a program that is fair and equitable to all students. These issues have included topics such as transportation, guidelines for student acceptance, information issues,

athletic recruiting, and funding. This section provides an analysis of how nine states with *formal statewide* programs (i.e., Arkansas, Colorado, Idaho, Iowa, Minnesota, Nebraska, Ohio, Utah, and Washington) have addressed these key issues. Once again, the goal was not to debate the merits of their activities, but to offer alternative methods for policymakers attempting to develop similar programs.

Transportation Issues

Who Is Responsible? –

Since interdistrict open enrollment involves having students travel outside their district of residence, transportation is frequently considered a key issue. In eight of the nine statewide programs, *the parents are responsible* for getting their children to at least an established bus stop within the receiving district (Nebraska allows the sending or receiving district to agree to provide transportation instead of the parent). At that point, the receiving district transports the student and is able to claim those miles in its state transportation formula (this approach is fairly revenue neutral since the resident district no longer counts miles for these students). One state (Arkansas) originally made the parent responsible for transportation, but modified this in 1991 in an attempt to attract more students. In that state, the resident district is now responsible for transporting the student to the border of the receiving district.

Support for Low Income Families –

In response to the issue that low income parents might not have the same access to transportation, six states provide additional funding for the reimbursement of transportation costs incurred by low income parents. Three states (Colorado, Idaho, and Utah) do not provide such support for low income parents. The definition of low income student varies by state with some using free/reduced lunch status and others using Aid for Dependent Children eligibility.

In response to a *maximum distance for which reimbursement* can be provided, Minnesota has established in law that parents can be reimbursed for a maximum of 250 miles per week at 15 cents per mile. Ohio has restricted its program whereby students can only transfer to adjacent districts (even if the parent is willing to transport farther).

Overall Transportation Costs –

The cost of providing transportation reimbursements is difficult to anticipate since it is impossible to know exactly how many low income and/or special education students will enroll in the program. Minnesota (which has the highest number of students transferring at 5,940) appropriated $50,000 for this task during 1990-91, of which only $12,500 was used. In Nebraska (with 1,567 students transferring), $22,000 was initially appropriated for 1990-91 and $24,000 for 1991-92. However, based upon actual experience during 1990-91, an additional $113,000 was dedicated for 1991-92 (total = $137,000). Washington appropriated $200,000 for transportation and public information, but few students transferred during their first year.

Special Education Transportation –

Finally, in reference to transporting special education students, two states (Nebraska and Washington) specifically state that the districts (not parents) are responsible for this task. Other states may have this provision, but it is not clearly stated in their laws.

State Guidelines for Student Acceptance

How much local control should be given to school boards to establish criteria for accepting/rejecting students is another issue. To minimize any concern that selection process inequities may occur, each of the nine states has set at least some minimum acceptance criteria which must be followed by all districts. Some allow districts to add other criteria. The various guidelines under which districts are able to say "no" to transfer students are summarized as follows.

Capacity --

Within each of the nine states, if the local school district determines that no capacity exists in a class, program, school, or district (as defined by the board), it is allowed to reject an out-of-district student.

Prior "Severe" Discipline Problems --

Two states specifically address prior discipline concerns as a condition of enrollment by an out-of-district student. Iowa states, "If a pupil has been suspended or expelled in the district, the student is not permitted to transfer until he/she has been reinstated in the sending district"; Ohio states "A student with discipline problems can be rejected if he/she has been previously suspended for ten days."

Special Education Programs --

Seven of nine states allow districts to reject handicapped students not only if they have no room in an existing program, but also if they do not have a program. Two states (Minnesota and Arkansas) specifically state that the child must be accepted and services provided, while Wisconsin requires participating private schools to accept the student, but not necessarily provide a specialized program as long as the parents are aware that this is the case (note: Wisconsin's provision was required by a Circuit Court decision). Colorado specifically passed a law during 1991 to clarify its law which now states that a program does *not* need to be created.

Application Deadlines --

Two states (Minnesota and Iowa) specifically state that students can be rejected if procedural deadlines for application are missed. Other states may include this, but it is not specifically stated in their laws.

Desegregation Issues/ Racial Balance --

Each state has included provisions whereby districts under desegregation plans must become involved in the program, but may reject student transfers (both coming and going) if it impacts their racial balance plan. Three states (Arkansas, Nebraska, and Ohio) also allow similar provisions for *all* districts. In Ohio, each school board is required to develop a policy on racial balance and to adhere to this policy when making decisions on student transfers. In Arkansas, the state has set limits in that districts with more than a certain minority population percentage can only permit student transfers (both coming and going) if the transfers improve (or at least do not harm) the district's racial balance. In Nebraska, all districts must give preference to minority students if their enrollment could improve the district's racial balance.

Overall, personnel in these states indicated that the racial balance issues have *not* been a problem

since their laws allow flexibility for districts under desegregation plans, and three states (Arkansas, Nebraska, and Ohio) have set up additional "protections" for their other districts.

Information Issues

In order for parents to have good information upon which to base their open enrollment decisions, several states have included state and local requirements for the distribution of program data. Minnesota's Department of Education informs parents about the general program through brochures, radio messages, local districts, a 1-800 telephone number, and press releases (these activities were handled with existing department funds). In Nebraska, $37,000 was appropriated to their Department of Education during 1989-90 to handle program implementation issues (including public information), plus $40,000 was given to handle the cost of appeals. Others, like Washington, require both the state and the local boards to provide public information. Most of the remaining states simply indicate within statute (or program guidelines) that the local districts must inform parents of their options.

Athletic Recruiting

Although minor in reference to other state-level issues, provisions regarding athletic recruiting have been enacted in several open enrollment states. Under most current state interscholastic association rules, students who transfer to another district without actually relocating to that district may be declared ineligible for one year (due to concern over illegal recruiting). Five states have accepted this ruling whereby transfer students may be ineligible to participate in sports for one year. Within four other states (Colorado, Minnesota, Nebraska, and Ohio), the association has either changed its rules voluntarily or the legislature wrote laws which required it to do so. This means that students which transfer in these states are eligible to participate without a time delay.

Funding Issues

Each of the nine states handles the flow of funds slightly differently according to its overall school finance formula. In this regard, only general patterns will be highlighted.

Current Year v. Prior Year Count --

Six of the nine states operate on a current year student count formula, while the remaining three use a prior year student count. This issue is important to open enrollment in that districts under a prior year count system would not receive any additional funding for the transfer students they accept until the following year (unless student increases are large enough to warrant sudden growth funding). Within a current year funding system, districts receive additional funding for the transfer students during the first year they are enrolled.

In two of three states which have a prior year count system, provisions to offer at least some funding during the current year for transfer students have been implemented. This is viewed as an incentive to enroll more transfer students (if capacity exists). Arkansas effectively "over funds" transfer students during their first year -- full payment to the resident district where that student had been for the prior year count and partial payment to the transfer district. Nebraska is implementing something similar as it phases in a new school finance formula (this state funds on a student count that is two years old).

In Iowa, the state formula is based on the previous year's count for regular education students and on the current year count for special education students. They have chosen *not* to provide any current year funding (from the state) for transfer students. Instead, the resident district continues to count the

student, with the receiving district billing it.

In summary, states using a current year funding count system appear to have fewer finance concerns as it related to their open enrollment system since receiving districts will not receive funding for the transfer students until the next year. Of the three "prior year" states, two opted to provide some additional current year funding.

Who Counts the Students? –

Once again, districts vary in their approach as to which district continues to count the student. In most, the new "receiving" district will simply begin to count the transfer student in its formula. However, in Iowa and Ohio, the resident district continues to count the student while the receiving district "bills" it for the funding. In Minnesota, the receiving district counts regular education students, while the resident district continues to count the special education students. In turn, the receiving district "bills" the resident district for special education costs. In Colorado, the three pilot districts get to decide among themselves who will count the students.

Special Education Funding –

Currently, both federal and state laws indicate that the district of residence is responsible for ensuring that all resident special education students have access to an appropriate program. If the district does not have such a program, it is still responsible for tuitioning the resident student to a district which does.

Within open enrollment, the issue is whether schools can or should be required to develop a special education program or provide tuition for *nonresident* students if the school does not have a program. Within most of the states, they have said "no"; however, they admit that they expect legal problems in the future. Minnesota requires districts to provide a program for these students, but has also developed a funding mechanism to support this. The resident district continues to count the special education student and receives a bill from the receiving district for the actual costs of providing a special program for the student.

Two advantages to Minnesota's financing scheme are that students cannot be rejected due to handicapping conditions and the receiving district does not have to absorb additional costs which may not be reimbursed by the state. Two disadvantages were noted: 1) the paperwork/billing between districts; and 2) the resident districts, in some cases, could have provided the program at a lower cost.

Access to Local Funding –

Utah has directly addressed the issue related to whether any portion of the local "supplemental" monies from a district should be transferred with the child. In Utah, the receiving district gets to count the student (thereby receiving the state foundation support for that student). Additionally, the resident district is required to transfer a portion of its additional local monies to that district. These monies include a per student portion of its voted levy, capital support (but not bonding/debt service), and several other local tax revenues. Rules established by the Utah Department of Education provide that after bonding monies and several other funds are removed, 50% of the "additional" local monies per student must be transferred to the new district. Under this scenario, parents may still be willing to support voted levies within their resident district although their child no longer attends that district, since a portion of the money will follow the child.

Utah's Department of Education personnel noted that this provision is the key reason that none of Utah's districts accepted transfer students under the new voluntary open enrollment laws. Previously existing interdistrict agreements did not require the transfer of local monies and therefore they are continuing to enroll students under those provisions. However, a strategic planning task force has recommended that the new law subsume the old laws regarding interdistrict transfers.

Loss of Students/Funding Issues --

Two states (Iowa and Nebraska) have included provisions which partially address the loss of student/funding issues for resident districts. Within both of these states, caps were established for the first three years to define the maximum number of students that a district may lose (5% first year, 10% second year, no cap thereafter).

Neither state has addressed the issue of "reduction in force" as it relates to laying teachers off if the funding loss becomes too great. Most states require that layoffs be based on seniority. This is an issue since districts may want to keep the "best" teachers as they attempt to improve.

PRIVATE SCHOOL ISSUES

The use of a state "voucher" at private schools continues to be part of the open enrollment debate. However, to date only one state, Wisconsin, has enacted provisions to allow this to occur on a pilot basis within the city of Milwaukee. Several additional issues come to light as private school options are considered.

State Oversight

In Wisconsin, the following requirements have been placed on the private schools that wish to participate in the voucher option. Generally, a private school must: 1) be nonsectarian; 2) have been in existence for at least one year; 3) have a minimum of 51% of its student body paying tuition; 4) define its capacity and take all applicants if capacity permits (including special needs students); 5) use a random selection lottery process to select students if the number of applicants exceeds capacity; 6) not charge additional tuition for the state voucher students; and 7) follow existing general state statutes covering private schools. This means that a special needs student must be accepted even if the school does not offer the program or services necessary to meet the student's needs, as long as the parent understands that a special education program will not be established (this was required as part of the Circuit Court's ruling).

Wisconsin's statutes also provide minimal oversight of *all* its private schools. Specifically, six statutory provisions state that a private school: 1) is defined as one which provides private or religious instruction; 2) must be privately operated; 3) must provide at least 875 hours of instruction per year; 4) must offer a "sequential progressive curriculum in reading, language arts, math, social science, and health"; 5) must not be operated for the purposes of avoiding compulsory school attendance; and 6) must provide students with at least two months' vacation in the summer.

Legal Issues

Ongoing hearings have occurred since the implementation of the Wisconsin program. Initially, the state's Circuit Court determined it constitutional for *nonsectarian* private schools in Wisconsin to receive funding for educating public school students. The Court of Appeals did not deal with this issue, but instead determined that the state constitution was violated since the provisions were part of a "local"

bill (i.e., Milwaukee School District only) passed by the legislature without appropriate public hearings. Currently, the Wisconsin Supreme Court is reviewing both the Circuit Court's decision and that of the Court of Appeals. This hearing was scheduled to begin in October, 1991.

The possible inclusion of *sectarian* private schools brings up another set of legal issues. A legal briefing prepared for Arizona's Task Force on Educational Reform (August 1991) concluded that sectarian private schools could be included as long as a state's open enrollment/parental choice system is developed in a manner that will pass constitutional scrutiny. Such a system would have to address the following five-part test set forth by the United States Supreme Court's decisions contained in *Lemon v. Kurtzman* and *Bowen v. Kendrick*; specifically, (1) whether the statute on its face has legitimate secular purpose; (2) whether the statute on its face has the primary effect of advancing religion; (3) whether the statute creates "an excessive entanglement" with religion via comprehensive and continuing state surveillance; (4) whether the statute as applied advances religion; and (5) whether the statute as applied creates an excessive entanglement with religion by funneling aid to "pervasively sectarian" institutions. A summary of this briefing is contained in Appendix C.

Financial Impact of Including Private School Students

Since state funding is not used to support students currently enrolled in private schools, there is a financial impact to consider if a state voucher system is to be established. For example, in Arizona, approximately 31,000 students are enrolled in private sectarian or non-sectarian schools which do not receive any state funds. If private schools were included in an open enrollment/choice option, additional state revenues would be required to support these students (e.g., at $3,000 per student, the additional state funding would be $93 million).

DIVERSIFICATION AND OTHER CHOICE ISSUES

The issue of creating more options (diversification) for parents and/or students is an important concept within a choice system. In several states, this is addressed through one or more key components: magnet schools, charter schools, and dual high school/post-secondary enrollment.

Magnet Schools

As an outgrowth of desegregation efforts, these schools generally offer specialized programs in hopes of attracting students. Historically, magnet programs have been developed primarily within districts under desegregation orders for two key reasons: 1) additional funding is usually available; and 2) magnet schools were originally conceived as an alternative to busing.

Few districts, other than those under desegregation agreements, have extensive magnet school systems unless other state or federal funding has been made available. For example, within Arizona, there are currently no state policies or funds which support the creation of magnet schools. Instead, as part of their court order for desegregation, some districts (e.g., Phoenix Union and Tucson Unified) have used additional local and federal funds to develop magnet schools. Although not commonly viewed as such, East Harlem District #4's open enrollment program in New York City is based on providing a choice for parents and/or students from several specialized (magnet) schools *within* the district. Lastly, one state (Colorado) has linked its interdistrict choice plans with magnet school funding by providing $50,000 to support the establishment of a magnet school within one of three districts volunteering to participate in the interdistrict program.

Charter Schools

A new choice concept of outcome based "charter" schools was authorized by the Minnesota legislature to begin during fall, 1991. Under these provisions, a certified teacher or groups of certified teachers may establish and operate a school. The concept is being referred to as "choice for teachers" in that it will provide an opportunity for teachers to run their own schools. The school is exempted from many state requirements; however, it must first obtain a "sponsorship" from an existing school board which agrees to oversee the "outcomes" of the school. Summary provisions, as extracted from law, are outlined in Appendix D.

High School/Post-Secondary Enrollment Option Plans

Allowing high school students to simultaneously enroll in high school and post-secondary institutions is another method used to increase "options" for students. This option plan recognizes and provides for the various interests and ability levels of 11th- and 12th-graders and allows them the opportunity to make the transition into higher education prior to high school graduation. General information regarding programs in three states (Minnesota, Ohio, and Washington) follows.

Minnesota --

Enacted in 1985, Minnesota's *Post-Secondary Enrollment Options* legislation provides public school 11th- and 12th-graders the option of attending two- or four-year *private or public colleges, universities, or vocational institutions*. These institutions must be nonsectarian and non-profit in order to participate. The state pays the tuition costs if the post-secondary credits are used primarily as high school credit. Students desiring dual credit to be indicated on their high school transcripts, and/or those attending high school full-time while earning college credit, must bear the college's tuition fee rather than the state. The legislation also requires that students and parents receive counseling in terms of their options and responsibilities through this program.

Additional state costs associated with the program are limited to transportation costs for low income students ($52,000 during FY 1990-91). Tuition support is derived by taking a pro rata share of funding which would have gone to the school district. This money in turn is disbursed to the higher education institute based on the percentage of hours the student attends each. During FY 1990-91, approximately 6,200 students (5% of all 11th- and 12th-graders) participated in the program. Districts are not required to provide transportation; therefore, students use public transit or their own vehicles.

Ohio --

Ohio's *Post-Secondary Enrollment Options Program*, optional in FY 1990-91 and mandated in FY 1991-92, allows public and chartered private school 11th- and 12th-graders the option of attending two- or four-year *private or public colleges, universities, or technical institutions*. These institutions *can be sectarian*, but all participating institutions must be approved by the Board of Regents. Each district must inform both parents and students by March 1 each year of the Post-Secondary Enrollment Options Program. The student and parent/guardian must attend a counseling session in order to participate in the program. High school transcripts reflect the credits earned from both.

The state pays the tuition costs regardless of whether the student attends full- or part-time; however, the participating institutions receive financial reimbursement based on the year end FTE. Currently, the maximum funding provided for a full-time student for FY 1991-92 is $2,170 (a combination of state and local funds)--regardless of the actual tuition costs. In addition, the institution

must also supply the students with texts and supplies. Additional state costs associated with the program are limited to transportation costs for low income students (since tuition funds are derived by taking a pro rata share of state funding which would have gone to the school district). The state reimburses students based on the average cost of transporting pupils in the prior year. During FY 1990-91, 586 students (0.2% of all 11th- and 12th-graders) participated in the program; however, since the program is mandated for FY 1991-92, the number of students participating is expected to more than double.

Washington –

As part of larger choice legislation passed in 1989, Washington authorized *Running Start* as a post-secondary enrollment option for public school 11th- and 12th-graders. This program allows students to earn college credits at *public community college districts and vocational technical institutes*, with the state supporting the tuition costs. Beginning as a pilot program in FY 1990-91 with five community colleges and all five of the state's vocational technical institutes, the program will be mandated in FY 1991-92 to include all of the state's two-year community colleges.

Eleventh- and 12th-grade students elect to participate in the program and are accepted into the colleges or vocational technical institutes on a space-available basis. Credits earned from the college or institute count for both high school and college requirements. Counseling is offered through both the high schools and colleges to inform students of their options and coordinate schedules and graduation requirements.

No additional state costs are associated with the program since school districts are required to pay the students' tuition on a pro rata basis for the number of hours that each student attends the higher education institution. Students are responsible for the purchase of books and fees. Transportation costs are the responsibility of participating students unless a district chooses to provide that service, but no state funds are available for transportation reimbursement.

SUMMARY

As educational reform initiatives continue across the nation, the concept of creating a "market driven" educational system continues to be debated. While much of the ensuing debate is philosophical in nature, many concerns arise about the specific components of a program. To this end, this paper has attempted to provide *descriptive* information on open enrollment/choice programs in a variety of states, as well as details on other state efforts to provide additional choices for students and parents.

APPENDIX A

As of spring, 1991, 10 states had enacted *formal* open enrollment legislation with seven having complete state programs (Arkansas, Idaho, Iowa, Minnesota, Nebraska, Ohio, and Utah) and three offering pilot programs or a more limited choice program (Colorado, Washington, and Wisconsin). The following outlines the legislative action taken by states to provide parents with additional opportunities to select the institution of their choice to educate their child.

OPEN ENROLLMENT/EDUCATIONAL CHOICE: A NATIONAL REVIEW

	ARKANSAS	COLORADO	IDAHO	IOWA	MINNESOTA	NEBRASKA	OHIO	UTAH	WASHINGTON	WISCONSIN
Intradistrict	V-existing	M-1990/91	V-existing	V-1989/90	V-existing	V-existing	V-1989/90; M-1993/94	V-existing	V-1990/91	1990/91 (Milwaukee) district → private only
Interdistrict	V-1989/90	V-pilot project-1990/91	V-district policy by 1991/92	M-1989/90	V-1987/88; M-1990/91	V-1990/91; M-93/94	V-1989; (V-district policy by 1993/94)	V-permissible with board approval prior to 1990 V-new legislation 1991	M-1990/91 (Restricted) Parents get permission and pay fee	N/A
Private Included	No	No	No	No	No	No	No	No	No	Yes
Transportation Responsibility/ Subsidized	S-district→border/Yes	parent→border/No	parent→border/No	parent → border/Yes (only adjacent districts)	parent→border/ Yes	parent→border or district→district/yes	parent→border/ Yes	parent→school (under 1990 legislation)/No	parent → border/Yes	S-district → school
State Guidelines for Rejecting Transfers	capacity; program; deseg.	capacity; no spec. ed. program; deseg.	capacity; no program	capacity; missed deadlines; discipline; no spec. ed. program; deseg.	capacity; application deadline; deseg.	capacity; no spec. ed. program; deseg.	capacity; no spec. ed. program; discipline; racial balance; deseg.	capacity; no spec. ed. program; discipline	capacity; no spec. ed. program; deseg.	capacity; must accept but don't have to provide spec. ed. program
Submit Annual Report	specific data only	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No
Methods for Informing Parents	local district	local district	no formal attempt	local district	local district brochures, radio, and 1 + 800 No.	brochures and 1 + 800 number	districts respond to requests only	brochures and local district	brochures and local district	press releases, not local district
Pupil Commitment	1 year	district option	1 year	4 years minimum	1 year	1 year	none	1 year	district option	1 year
Application Deadline/Reapply	April 17/No	district option	February 1/Yes	November 1/No data	January 16/No	January 1/No	district option	February 1/No	district option	June 30/No data
Ceiling on Transfers	none	district option	none	6%; 10%; none (phase-in)	none	minimum of 6%, 10%, none (phase-in)	none	none	none	1,000/year
Athletes Ineligible	Yes → 1 year	No	Yes → 1 year	Yes → 1 year	No	No	No	Yes → 1 year	Yes (exemptions possible)	not an issue (yet)
$ for Transfer Students	R counts; prior year funding/some current year support	R & S determine who counts; current year funding	R counts; current year funding	S counts/R bills; prior year funding	R counts except handicapped (S); current year funding	R counts; prior year funding/some current year support	S counts/R bills; current year funding	R counts & S sends "local" portion; current year	R counts & parent pays transfer fee; current year	State pays voucher
Interdistrict (% of Usage) =	no data	no data	1,674 (0.8%)	no data	6,940 pupils (0.8%)	1,567 (0.6%)	19 (.001%)	none under new law; 6,000 previously	few under new law; 30K previously	(341/1,000 pupils) 34%
Reasons for Leaving District	special curriculum; pre-post day care	math/science prog.; athletics; proximity	curriculum; physical proximity to school; better athletic programs	curriculum; proximity; parent's job location	curriculum; proximity; parent's job location; school environment	curriculum offerings (music #1)	curriculum	proximity; magnet curriculum	proximity to parent's job and child care; education/health/ safety reasons	private school closer
Special Appropriation	no data	$50 K = magnet school	none	no data	$50 K = transportation	$1.052 million = administration; transportation; current yr. funding; deficit for appeals	none	none	$200 K = brochures; transportation	none
State Student Population/Minority Percentage	426,000/ 24%	674,213/ 24.7%	220,000/ 11%	478,486/ 5.4%	731,000/ 10%	272,982/ 10%	1,770,876/ 17%	444,732/ 7%	839,709/ 17.8%	98,000/ 64.3% (Milwaukee School District)
# Districts Participating (interdistrict)/# Districts in State	160/360	3/176	no data/113	430/430	436/436	sending *171/812; receiving *118/812 *Districts may permit both	3/612	0/40	no data/298	N/A

Legend: V - Voluntary; M - Mandated; G - Gradual; W - Wholesale; ADM - Average Daily Membership; K - Thousand; R - Receiving District; S - Sending/Resident District

Kim Sheane, Morrison Institute, ASU (10-30-91)

ARKANSAS

Overview

A statewide plan passed the legislature in 1989 implementing voluntary interdistrict transfers; this plan began in the 1989-90 school year with each district having to formulate a policy regarding its participation or non-participation. Out of 324 districts, 160 chose to participate. Intradistrict transfers have always existed.

Key Components

Transportation: Originally, the parent was responsible for transporting the student to the border of the receiving district. This was amended for the 1990-91 school year whereby the sending district is responsible for transporting the student to the receiving district. The sending district is reimbursed for the cost of transporting each transfer student. This plan was amended by the legislature in the hope that it would encourage more students to transfer.

State Guidelines: Each district is responsible for establishing guidelines defining its capacity for accepting additional students. The state provides guidelines to ensure fair application of procedures and selection criteria. Districts can deny transfer students for the following reasons: 1) capacity; and 2) not offering a program the student requires.

Annual Report: The districts are not required to submit a formal report for review; however, the Arkansas Department of Education has oversight authority. Districts are required to provide specific data only to the "Equity Assistance Center" within the Department of Education about race and gender of transfers.

Racial Balance: Arkansas currently has four urban districts under court ordered desegregation. Arkansas' choice law has several protections built in which prevent segregation: 1) districts under court ordered desegregation are exempt from participating in open enrollment unless it improves their minority imbalances, and 2) districts not under court ordered desegregation cannot upset the current racial makeup of their student population. If this occurs, the State Board of Education can intervene by investigating the transfer situation.

Because of the concentration of minorities in southeast and central Arkansas, districts generally tend to exchange white students for white students and minority students for minority students. Under no circumstances are transfers permitted if it would upset the racial balance of a district.

Methods for Informing Parents: The state Department of Education requires districts to explain to parents via mail their participation in interdistrict transfers.

Pupil Commitment: Transfer students are required to commit to one year and must apply by April 17.

Ceiling on Transfers: There is no limit as to the number of students who can depart from a district in a given time frame.

Athletes: Athletes who transfer are ineligible for one year.

Funding: Districts receive funding for additional students in the following fiscal year.

Usage/Reasons

The number one reason parents give for transferring their student is the belief that he/she is not receiving a good education in their neighborhood school. Also, many districts are limited in the curriculum they offer and are not preparing their students for college.

Arkansas has a student population of 425,000. The number of students choosing to transfer was not as high as had been hoped. Many believe it is due to the intense local support of the rural/neighborhood school.

Legislative/Public Expectations

Some of the expectations of the legislature concerning open enrollment are as follows: 1) keep schools accountable; 2) improve curriculum offerings; and 3) send a signal to districts about the need to improve. However, open enrollment is not viewed as a panacea in Arkansas because of the amount of ownership rural communities invest in their local schools.

Educators, as well as some members of the public, fear losing enrollment to the point where it affects the local school and community; however, another segment of the public sees open enrollment as access to the best curriculum and teachers.

Current Issues

The primary issue currently being investigated is transportation. Currently, each district is required to transport the student to the border of the receiving district. In addition, no subsidy is provided for the sending district.

Some factions of the legislature would like to see open enrollment progress to where choice includes private and religious schools; but, the opposition from the public, educators, and the Arkansas Education Association is strong. They believe that such an open enrollment plan would erode the base of public schools.

COLORADO

Overview/History

In 1990, Colorado passed into law a two-fold plan regarding open enrollment: 1) all districts must allow students to choose schools within each district, and 2) districts were given the option to participate in a pilot project involving interdistrict transfers between magnet schools. Three out of 176 school districts volunteered for a pilot project that approved of each district having a magnet school for the purpose of drawing students from other districts.

Key Components

Transportation: The law allows interdistrict transfers but does not provide transportation for the students. It is the responsibility of the parent to ensure the child has proper transportation to and from the school. There is also no transportation provided for intradistrict transfer students.

State Guidelines: The state does not have guidelines for districts to define their capacity for accepting additional students. It is the responsibility of each district to do this for itself. The local school districts are also responsible for ensuring fair application of procedures and selection criteria for transferring students.

School districts can deny transfer students for several reasons: 1) a lack of space; 2) a lack of handicapped facilities preventing handicapped students from transferring; and 3) students desiring programs that a school currently does not offer. In addition, the Denver School District is under a desegregation order and can only accept students who improve the minority ratio.

Annual Report: More school districts have volunteered to be part of the open enrollment pilot project; they have yet to be approved by the legislature. Since funding is attached to the pilot project, each district that is allowed to participate will be reviewed at the end of the 1991-92 school year. This review could be in the form of a site visit and/or annual report.

Racial Balance: The school district of Denver is currently under court ordered busing to control population balances; however, Denver is not one of the three districts volunteering for the interdistrict transfer program.

Methods for Informing Parents: Each local district is responsible for informing parents of the open enrollment option via letter, publications, and/or local newspaper.

Pupil Commitment: The state has not mandated a specific length of commitment for each transfer student; however, each district has the option of requiring a time commitment.

Ceiling on Transfers: There is no ceiling on the number of students who are permitted to leave a district; however, each district has the option to place a ceiling on the number of students it receives.

Athletes: Initially, open enrollment impacted on athletes' eligibility based on residency because the legislature denied students eligibility for the first semester of the school year. This, however, was revised during the first year because it discriminated against athletes in fall sports but not those participating in spring sports.

Funding: Since the fiscal year begins January 1, each district's ADM (average daily membership) is based on fall enrollment; therefore, transfer students are included in the ADM of each receiving district and payment for these students occurs in January.

There is a flat funding rate for transfer students with a phasing in of equalization not to exceed the current 50% state funding.

Usage/Reasons

No projection was made as to the number of students who would transfer to a magnet school. There are two main reasons parents choose a magnet school for their student: 1) the specialized curriculum, and 2) one magnet school (not a neighborhood school) in Denver which offers pre- and post-daycare for all students enrolled. This has been in operation for five years and costs the parents approximately $140 per month.

Legislative/Public Expectations

Since there was very strong public reaction against open enrollment, a modified version was passed in the legislature permitting intradistrict transfers in addition to the three volunteer school districts each establishing a magnet school. The main opposition was to interdistrict transfers, and this issue was not addressed in the law that was passed. The goal of the legislature was to have public opposition quiet down by approving only a pilot project; this has been achieved.

The general public is strongly opposed to having their tax dollars support a private or religious school. In addition, the public takes issue with the following: 1) graduation standards must be applied and enforced for all institutions; 2) accountability for students' academic achievements must be assessed; 3) financial instability of private and religious schools is a concern; and 4) consumer information must be available to all parents making decisions about schools.

The legislature's primary concern with adopting statewide interdistrict open enrollment is the additional financial commitment. Currently, approximately 36,580 students attend private, religious, or preschools; therefore, the state is not currently paying to educate these students. However, if open enrollment was adopted, the state would have to pay the current per pupil expenditure of $4,462 for these additional students.

Current Issues

Two issues were revised during the 1990-91 school year that amended the original bill. First, initial legislation allowed special needs students to attend the school of their choice; however, this was modified midyear to state that these students could not force/require a school to provide a program that the school did not already offer. Schools can now reject a special needs student's request for transfer if the school does not already offer the program necessary for the student. Second, students active in varsity athletic programs were initially denied eligibility for one semester; however, this affected some sports programs and not others. Consequently, the ineligibility rule was waived.

IDAHO

Overview/History

The legislature passed a statewide plan in 1990 implementing open enrollment for interdistrict transfers for those 113 districts wanting to volunteer; however, by 1991-92, all districts must have a policy establishing their position on interdistrict transfers. Intradistrict transfers already existed with each local district establishing its own policy.

Key Components

Transportation: The parent is responsible for transporting the student to the border of the receiving district. There is no financial provision for students of low-income families.

State Guidelines: It is each district's responsibility to provide guidelines defining its capacity for accepting additional students. In addition, each district establishes its own guidelines to ensure fair application of procedures and selection criteria.

Districts can refuse to accept transfer students for the following reasons: 1) capacity, and 2) no handicap access.

Annual Report: The State Department of Education conducts an annual survey of each school district and compiles the data. The 1990-91 report has not been completed.

Racial Balance: There is no need to control population balances because the minority percentage of the student population is so low (11%).

Methods for Informing Parents: There was no formal, overt attempt by the state to inform parents about interdistrict transfers. The media took it upon themselves to inform parents.

Pupil Commitment: Students are required to commit to one year and must reapply each year by the February 1 deadline.

Ceiling on Transfers: There is no ceiling on the number of students who can depart from a district in a given time period.

Athletes: Athletes are ineligible for one year when they transfer to a new district; however, if they move into a new district, they are eligible after two weeks.

Funding: The state funds each district five times a year based on the district's ADM. The state average for funding is 70%; however, some districts receive 50% while others receive as much as 85%. Transfer students, for funding purposes, are considered resident students in the receiving district's ADM.

Usage/Reasons

No data have been collected on the number of students participating in open enrollment. The reasons parents give for opting out of their neighborhood schools are as follows: 1) better math and science programs; 2) better athletic programs; and 3) closer physical proximity to school.

Legislative/Public Expectations

No legislative expectations were associated with open enrollment, but one politically active interest group from the general public was completely convinced that poor test scores and students' inefficiency were the results of a great number of incompetent teachers in the educational system. They were an active voice for open enrollment because they believed that competition between schools would weed out ineffective teachers.

Educators from schools that excelled felt comfortable with the concept of open enrollment because the good schools are already filled to capacity, and they would not be able to receive transfer students anyway. Other educators from growing school districts were concerned with their need to pass bond elections.

Current Issues

There are no issues currently being revised or investigated.

IOWA

Overview/History

Legislation passed in early 1989 called for a wholesale implementation of interdistrict open enrollment; however, the board of directors of a school district subject to volunteer or court-ordered desegregation could vote not to participate in open enrollment during the 1990-91 school year. If a district chose not to participate in open enrollment, the district was required to develop a policy for implementation of open enrollment for the 1991-92 school year.

Each local school district determines its own policy on whether or not to permit transfers within the district. The 1989 legislature authorized interdistrict transfers, mandating the participation of all school districts. In addition, parents can only choose the district they want their children to attend (not the school in the district), and the district assigns each child to its choice of school.

Key Components

Transportation: The parent is responsible for transporting the student without reimbursement to and from a point on a regular school bus route of the receiving district. A receiving school district shall not send school vehicles into the district of the residence of the pupil using the open enrollment option; however, if the pupil meets the economic eligibility requirements established by the department and State Board of Education, the sending district is responsible for providing transportation or paying the pro rata cost of the transportation to a parent or guardian for transporting the pupil to and from a point on a regular school bus route of a contiguous receiving district, unless the cost of the transportation to a parent or guardian exceeds the average transportation cost per pupil transported for the previous school year in the district. If the cost exceeds the average transportation cost per pupil transported for the previous school year, the sending district shall only be responsible for the average per pupil amount.

State Guidelines: Iowa has guidelines for districts to define their capacity for accepting students; however, if a failure to transmit a request will result in enrollment of students from the same nuclear family in different school districts, the request shall be transmitted to the receiving district for enrollment.

Each school board must adopt a policy relating to the order in which requests for enrollment in other districts shall be considered. The state has standard application forms that it dispenses to all school districts; parents have access to these forms at their resident district office.

Students can be denied access to another school district for the following reasons: 1) there is no classroom space; 2) all districts involved in volunteer or court ordered desegregation regarding minority and non-minority pupil ratios shall be maintained according to the desegregation plan or order. If a request is denied by the superintendent due to a desegregation plan or order, the parent can appeal the decision to the school board of the district in which it was denied; 3) no good cause can be provided as to why the application deadline of November 1 was not met; 4) a pupil has been suspended or expelled in the district (the student is not permitted to transfer until he/she has been reinstated in the sending district); and 5) the student requires a program not offered in the receiving school.

Annual Report: Each school district provides data concerning transferring students in its annual report submitted to the Department of Education.

Racial Balance: To control population balances and prevent districts from being charged with violations of civil rights laws, the state has established MOA (Method of Administration) visits. A team of Department of Education personnel visits schools selected randomly or specifically due to examining data indicators that might forecast potential problems. This team also revisits schools that have had a problem in the past.

Methods for Informing Parents: Each local district can lobby parents with information concerning their district, but little or no recruiting of students takes place.

Pupil Commitment: Each student desiring a transfer is required to commit to a period of not less than four years. A student cannot be released from this agreement unless the pupil graduates, the pupil's family moves to another school district, or the parent petitions the receiving district by November 1 of the previous school year for permission to enroll the pupil in an alternative district, which may include the district of residence. The transfer student is required to reapply after the four- year commitment.

Ceiling on Transfers: During the 1989-90 school year, a district could deny a student's request to transfer if its student population had declined more than 5% from its 1988-89 certified enrollment. During the 1990-91 school year, a request could be denied if the student population had declined more than 10% from the 1988-89 certified enrollment. There is no provision in the 1991-92 law for a ceiling on enrollment losses for a district.

Athletes: A pupil who participates in open enrollment for purposes of attending any of grades 10 through 12 in a school district other than the district of residence is not eligible to participate in interscholastic athletic contests or athletic competitions during the first year of enrollment except for interscholastic sports in which the district of residence and the other school district jointly participate or unless the sport in which the pupil wishes to participate is not offered in the district of residence. However, a pupil who has paid tuition and attended school, or has attended school pursuant to a mutual agreement between the two districts, in a district other than the pupil's district of residence for at least one school year prior to March 10, 1989, is eligible to participate in interscholastic contests and athletic competitions, but only as a member of a team from the district that pupil had attended.

Funding: The receiving district receives funding for a transfer student based on the lower amount of either the sending district's state aid or the receiving district's state aid. A student participating in open enrollment is counted in his or her district of residence. The district of residence pays to the receiving district the lower of the district costs per pupil, plus any funding received for the student as a result of the non-English speaking weight and Phase III money allocated to the district for the full-equivalent attendance of the student.

Usage/Reasons

The usage increased during the second year of open enrollment, although no specific numbers are currently available.

Reasons parents give for opting out of their current district: 1) proximity to new district; 2) quality of academic/course offerings of other district; and 3) parental preference of having their student attend a school near their work location. Parents can appeal the rejection of a transfer to the Department

of Education, where it goes before a hearing panel. There have been a great number of appeals because parents missed the application due date of November 1 by a few days, and/or receiving districts denied a student access.

Legislative/Public Expectations

The expectations of the legislature when it adopted open enrollment were as follows: 1) to permit a wide range of educational choices for children; 2) to maximize parental choice; and 3) to provide access to educational opportunities which were not available to children because of where they lived.

The general public feared that athletic recruiting would occur with open enrollment. A number of superintendents and board members were concerned about the loss of funding from the state due to students leaving their districts.

Current Issues

One issue currently being investigated is transportation. Middle and upper SES (socioeconomic status) parents complain that they are being discriminated against by having to transport their children at their own cost to the receiving district, while low-income families are reimbursed. In addition, parents are frustrated with the "timeline" regarding the processing of applications.

MINNESOTA

Overview/History

In 1987, legislation was passed that allowed school districts to volunteer to participate in open enrollment. Prior to this legislation, school districts could deny students the option of transferring to another district. This legislation empowered parents so that they could make the choice for their students. In the 1989-90 school year, participation was voluntary only for those districts under 1,000 students, but it was mandated for all others. For 1990-91, all districts had to permit interdistrict transfers.

Key Components

Transportation: The receiving district provides transportation for non-resident students within the borders of the out-of-residence district; however, transportation to the border of the non-resident district is the responsibility of the parent. Low-income parents can apply to the non-resident district for state transportation funds which are allocated according to financial need. The State Board of Education establishes guidelines for financial need determinations.

State Guidelines: Minnesota established the following minimum criteria as a basis which could be expanded upon by local districts: 1) available space in district; 2) available space in program or building; 3) application received according to deadlines established; and 4) desegregation plans. The state investigates parental complaints regarding districts' guidelines for application procedures and selection criteria.

All districts are required to offer special needs programs; a transferring student can cause a school to offer a mandated program even if the program was not currently being offered. No school district can discriminate based on handicapping conditions of students.

Annual Report: No district submits an annual report for review to the Department of Education.

Racial Balance: Each local board is required to comply with all Minnesota laws and regulations and with existing desegregation plans and guidelines. Three large districts, Minneapolis, St. Paul, and Duluth, have desegregation plans.

Methods for Informing Parents: The state informs parents by: 1) sending brochures to school districts; 2) radio messages; 3) establishing a 1-800 telephone number; and 4) giving press releases.

Pupil Commitment: Each student is required to commit to one year prior to transferring.

Ceiling on Transfers: There is no ceiling on the maximum number of students who can leave a district in a year.

Athletes: There is no period of ineligibility for transfer students.

Funding: All transfer students are considered residents of the receiving district for funding purposes. Under the open enrollment plan, state aid of up to $3,600 per non-handicapped student moves with the student to the receiving district. The state directly funds the receiving district.

Usage/Reasons

Each year the number of students transferring has increased due to the number of districts volunteering to participate and parental awareness of the opportunity regarding open enrollment. The number of transfer students in 1987-88 was 137 out of a possible student population of 227,071. In 1990-91, 5,940 students participated out of a student population of 731,000.

Legislative/Public Expectations

Expectations and goals of the legislature regarding open enrollment were as follows: 1) to promote student achievement by encouraging school districts to be more responsive to students; 2) to assist educators who want to create distinctive, high quality programs; 3) to create school diversity; and 4) to improve parental involvement and educational morale.

Two months after Governor Rudy Perpich proposed open enrollment legislation, a statewide poll found 33% in favor and 60% opposed. Nevertheless, parts of the Governor's proposal were adopted during each of the next four years. Experience encouraged support, and a 1987 statewide poll found 56% favored Perpich's proposal with 39% opposed. A 1988 summer statewide poll found that 63% now supported open enrollment with 31% opposed. In four years, opinion had change from 2-1 against to 2-1 in favor.

Supporters of open enrollment include elementary and secondary principals, the Minnesota PTA, business leaders, the League of Women Voters, community leaders representing the social work and nursing professions, and community social action groups.

Current Issues

One issue that has been resolved in the past year allows students who move after the application deadline of January 15 to have their applications processed.

NEBRASKA

Overview/History

A statewide plan implementing interdistrict transfers was passed by the 1989 legislature; refinements were passed in 1990 and 1991. Intradistrict transfers already existed, so the legislation only dealt with interdistrict transfers.

Participation was voluntary during the first year (1990-91) of the program. Beginning in the 1991-92 school year, each district is required to allow 5% of its students to participate in open enrollment, if requested. The 1992-93 school year requires each district to allow 10% of its students to participate in open enrollment, if requested; however, for both 1991-92 and 1992-93, the receiving district's participation is still voluntary. Full implementation of the choice plan occurs during the 1993-94 school year, permitting schools to reject applications only for capacity reasons or if it disrupts their desegregation plan. There will be no ceiling on transfers in the 1993-94 school year.

Key Components

Transportation: State funds are used to provide transportation reimbursement to parents of students desiring interdistrict transfers if those students qualify for free or reduced lunches. The school district can receive this reimbursement for additional miles traveled, if it provides the transportation and the parents agree to the arrangement.

Nebraska was advised by legal counsel to provide transportation services for handicapped transfer students if it was required as a related service, even though the open enrollment program does not offer transportation services to non-handicapped students.

State Guidelines: The state allows each district to define its capacity for accepting additional students; however, the statute states that capacity shall be determined by setting a maximum number of option students that a district will accept in any program, class, grade level, or school building, based upon available staff, facilities, projected enrollment of resident students, projected number of students with which the option district will contract based on existing contractual arrangements, and availability of appropriate special education programs.

The Department of Education has developed rules about how districts make decisions to ensure fair application of procedures and selection criteria. Additionally, parents can appeal any rejection to the State Board of Education.

A district cannot deny a student enrollment for any reason other than capacity or desegregation orders. Statutes specifically state that standards used by local districts for acceptance or rejection of applications shall not include previous academic achievement, athletic or other extracurricular ability, handicapping conditions, proficiency in the English language, or previous disciplinary proceedings.

Annual Report: Each district submits a copy of its applications to the Department of Education, which reports on the operation of the program for the previous year to the legislature by September 1. The report includes such information as: 1) the number of students participating; 2) the reasons for the transfers; 3) the number of applications rejected; 4) the number of appeals; and 5) any problems encountered.

Racial Balance: Since Omaha School District is under a desegregation plan, it is permitted to limit transfers in and out of itself in order to remain in compliance with its desegregation plan.

Methods for Informing Parents: The Department of Education provides brochures for parents to assist them in making their choice, but it is an area that Senator Dennis Baach (who introduced the legislation) believes needs improvement because brochures are only mailed to parents who inquire, not to all parents.

Pupil Commitment: Each student is required to commit to one year when transferring out of the district; however, a district can agree to allow a student to return if the student is unhappy with the arrangement. Transfer students are not required to reapply each year.

Ceiling on Transfers: In 1991-92, there is a 5% ceiling on the number of students who can leave a district. In 1992-93, there will be a ceiling of 10% on the number of students approved to leave a district. For the 1993-94 school year, all restrictions will be removed.

Athletes: The original bill contained a one-year period of ineligibility for athletes who transferred during their high school years; however, this was repealed by the legislature prior to the first year of open enrollment and accepted by the Nebraska School Activities Association (NSAA). It was agreed by the legislature to allow the NSAA to handle any recruitment violations, as was its duty prior to the passage of open enrollment.

Funding: For the 1990-91 and 1991-92 school years, schools are receiving current year funding for the statewide average cost per student or the receiving district's cost per student, whichever is less. However, this amount is substantially prorated due to greater participation than was expected. The 1992-93 and 1993-94 school years will be a phase-in period of the new funding methods which ties the choice funding in with the new school finance system. Schools will receive the difference from their cost per student and what was received during the first two years of the program under the prorated payments. Beginning in the 1994-95 school year, schools will be assured their cost per student (calculated by comparing schools of similar size) for each transfer student. However, this reimbursement will be two years in arrears according to the state formula.

The state's adoption of open enrollment has not undermined equalization. As a matter of fact, it has served as an impetus to fund equalization. The financing of education has been completely revamped; the legislature approved a 1% increase in the sales tax and a 17.5% increase in income tax with the promise that ALL revenue would go directly to serving the educational needs of the students.

The Department of Education received $36,000 in 1990-91 and $37,000 in 1991-92 for implementation of the open enrollment program; this included funding for a part-time person to monitor reimbursement and a part-time person to offer technical assistance to schools, as well as operating expenses and capital outlay. The Department also received $40,000 for both the 1990-91 and 1991-92 school years for the cost of appeals. Initially, $22,000 was appropriated for transportation reimbursement for low income families during the 1990-91 school year and $24,000 for the following year. However, an additional $113,000 was appropriated for the 1991-92 school year to cover the higher-than-expected costs for transportation reimbursement.

Usage/Reasons

The number of students participating in open enrollment in 1990-91 was 567 (0.2%) of a state student population of 272,982; however, over 1,000 additional students have requested transfers for the

1991-92 school year, which represents 0.6% of the student population. The percentage of use in the first year was greater than expected. As a result, payments made to school districts for their cost per student had to be prorated by approximately 50%.

The number of participants is likely to increase during the phase-in years since more students will be allowed to participate. The current trend is expected to increase once Lincoln School District has room to accept more students.

Curricula offered by the receiving district were the most common reasons for the transfer. Broken down by course offerings, music was listed most often. Since Nebraska has over 800 school districts with a state population of only 1.5 million, many of the school districts are too small to offer a quality music program.

Legislative/Public Expectations

The expectations of the legislature when adopting open enrollment were as follows: 1) parents would be happier knowing they were not locked into their neighborhood school, which would hopefully result in greater parental involvement in their children's education; and 2) choice would provide the best education for the needs of each individual student. The outcomes as a result of open enrollment: 1) schools reassessed what they were doing; and 2) school boards focused on curricula and course offerings.

Members of the public were concerned that open enrollment would be used as a "back door" approach to consolidating small school districts; however, this was not Senator Baack's intention when introducing the legislation.

Educators were not initially supportive of the concept due to their concerns about the funding method and fearing what would happen to a school district if most of its students decided to attend another district. The four year phase-in and altering of the funding method have helped to alleviate their concerns.

Current Issues

Issues currently being revised or investigated are: 1) by 1993, elementary-only school districts must either consolidate, affiliate, or join with a high school district so that all land will be supporting a K-12 district; 2) siblings of students already enrolled in an out-of-resident district school will have priority when transferring to that school; and 3) appeals are heard before the State Board of Education.

OHIO

Overview/History

Ohio's statewide plan for mandated intradistrict transfers was passed in 1989, but it will not be in effect until July 1, 1993. Until then, districts can voluntarily implement intradistrict transfers. The 1989 statewide plan also mandated districts to have an interdistrict transfer policy in effect by then. A school district also has the option of voluntarily implementing interdistrict transfers ONLY if it has at least one bordering district that also wants to implement interdistrict transfers. After 1993, this provision will no longer be pertinent; a district will be able to establish an interdistrict transfer policy without a bordering district also having adopted the same policy. Students will be allowed to transfer out of districts even if their district does not participate in interdistrict transfers by accepting students.

Key Components

Transportation: Transportation of intradistrict transfer students will be the responsibility of the resident district; however, parents are responsible for transporting interdistrict transfer students to a designated bus stop in the receiving district. If a resident school district provides transportation for needy students in the same grade level and at the same distance to school as that of a receiving district, the resident district provides transportation to the adjacent district for students to attend a school within the boundaries of the receiving district. A school board could reimburse the parents of students living below the federal poverty line for the reasonable cost of transportation from the student's home to a designated bus stop.

State Guidelines: The guidelines for districts defining their capacity for accepting additional students are as follows: 1) preference is given to neighborhood students; 2) student discipline problems can be rejected if he/she has been previously suspended for ten days; 3) the parent must assume responsibility for transporting the student to school; 4) no requirement of academic, artistic, athletic, or extracurricular skills can be imposed; and 5) transfers cannot cause racial imbalances.

The State Board of Education is required to monitor school districts to ensure compliance with their policy and provisions of the bill. The State Board could adopt rules requiring uniform application procedures, deadlines for applications, notification procedures, and record keeping. No school board could then adopt a policy that conflicted with these rules.

School districts will have the option not to participate in interdistrict transfers and will, therefore, be able to deny requests from students outside their district.

Annual Report: Each district currently volunteering for inter- or intradistrict open enrollment submits a report to the State Board of Education for review.

Racial Balance: Each district must formulate procedures to ensure that an appropriate racial balance is maintained in its schools.

Methods for Informing Parents: Each board of education must provide information about its enrollment policy and application procedures to the superintendents of all adjacent school districts and, upon request, to the parent of any adjacent school district student.

Pupil Commitment: Students are not required to commit for a specific period of time.

Ceiling on Transfers: There is no ceiling on the number of students who can transfer out of a school district.

Athletes: The three contiguous districts volunteering for open enrollment were confronted with the athletes' ineligibility rule. Ohio's High School Athletic Association finally agreed to waive the ineligibility rule.

Funding: State money represents 50% of the funding for students; however, district funding from the state can range from 10% to 90% depending on the wealth of the district and the cost of educating students in it.

Districts participating in interdistrict transfers will receive their funding for these students in an end-of-the-year review; therefore, the districts will receive this funding in their final settlement of the current year (June).

Usage/Reasons

Currently, three contiguous districts allow interdistrict transfers. Out of a combined student population of 2,500, only 19 students chose to transfer.

Legislative/Public Expectations

Some expectations of legislators when adopting open enrollment were: 1) to improve learning; 2) to provide greater educational opportunities for students; and 3) to improve education by competition.

Current Issues

No changes in open enrollment legislation are anticipated for the next year. There is some talk of the voucher system because of the national interest it is gaining.

UTAH

Overview/History

A statewide plan was passed in the 1990 legislature implementing interdistrict transfers for those districts choosing to participate; however, a number of school districts already had established previously negotiated arrangements with other districts. The new legislation in 1990 did not override these arrangements; therefore, none of the state's 40 districts have opted to volunteer for interdistrict transfers under the 1990 legislation because it would "open up their borders" and programs to other districts.

Key Components

Transportation: The parent is responsible for transporting the student to and from their residence. State transportation is available to all students except those who choose to transfer.

State Guidelines: General guidelines have been provided by the state to define a school's capacity, but generally it is the responsibility of each district. The state requires each school to accept students in the following priority: 1) neighborhood students; 2) within district students; and 3) outside district students.

School districts can deny certain types of students in the following priority: 1) serious discipline problems; 2) capacity; and 3) programs not currently being offered.

Annual Report: No district is required to submit an annual report.

Racial Balance: Nothing is done to control population balances because the minority percentage is so low (7%).

Methods for Informing Parents: Districts participating in interdistrict transfers are required to mail information to the parents when they inquire.

Pupil Commitment: Students are required to commit to one year.

Ceiling on Transfers: There is no ceiling on the number of students who can transfer from a district in one year.

Athletes: Athletes who choose to transfer are ineligible for one year.

Funding: State funding follows each transfer student on a monthly basis. A student who enrolls in a non-resident district is considered a resident of that district for purposes of state funding; however, the district of residency shall pay one-half of the resident district's per-student expenditure that is above the value of the state contribution to the non-resident district for each student who enrolls in the non-resident district. The payment shall be phased in over a two year period for students currently enrolled in the non-resident district. For the first fiscal year, the district of residence shall pay 25% of its per-student expenditure that is above the value of the state's contribution for each student participating in the program. The payment shall increase to 50% for the second fiscal year and for each year thereafter.

Usage/Reasons

Middle and upper SES students are opting to relocate, but this arrangement has been negotiated between mutual districts. The majority of the minority population is Native American, and they generally reside in the rural sections of the state with fewer opportunities for transferring.

Current Issues

One issue that is currently being investigated by legislators is the voucher system. This is due to their frustration with the educational system as a whole, and they believe that if parents can shop for a school, the good ones will survive and the poor ones will not.

WASHINGTON

Overview/History

The 1990 legislation required school districts to allow intradistrict open enrollment, but it allowed each district to determine its own policy regarding its participation in interdistrict transfers. Prior to the 1990 legislation, there were approximately 30,000 interdistrict transfer students; however, there were no state guidelines ensuring fair application of procedures and selection criteria. Districts made arrangements and agreements with one another at their own discretion. Since the state now has guidelines to ensure fair application of procedures and selection criteria, some of the previously participating districts have chosen not to accept students any longer because the reasons for rejecting a student are no longer in their control. As a result, there has been a decline in the number of transfer students.

Key Components

Transportation: It is the responsibility of the parents to either transport their students to the school of the receiving district or to negotiate with the sending and/or receiving district to provide the service for them. Low income parents are reimbursed for transporting their students to the school of the receiving district; however, as yet, there are no statutory or budgetary guidelines defining "low income" for purposes of qualifying for the transportation subsidy.

It is the responsibility of the receiving district to transport special education and handicapped students from the resident district.

State Guidelines: The state does not provide guidelines for districts to define their capacity for accepting additional students. The statute states that districts must consider all applications equally with "rational, fair, and equitable standards for accepting and rejecting students"; however, these terms are not defined in the statute but are somewhat defined in Agency rules.

School districts can reject non-handicapped students for the following reasons: 1) capacity; 2) program not currently being offered; 3) creation of a racial imbalance; and 4) inability to pay transfer fee. Districts cannot directly deny admission to certain types of non-resident students, but must admit students according to a policy that is fair and equitable. In addition, a district can do nothing to keep a student from participating in interdistrict transfers if the student is accepted by a non-resident district for qualifying reasons.

A school district accepting a non-resident student must offer a special education program for a student if he/she requires it, even if the district did not previously offer the program.

Annual Report: Each district is required to submit an annual report to the State Superintendent of Public Instruction.

Racial Balance: Seattle is under voluntary desegregation and is therefore not required to participate in interdistrict open enrollment unless it improves racial imbalance.

Methods for Informing Parents: For the 1990-91 and 1991-92 school years, the state has published a brochure that informs parents of the open enrollment plan. These brochures are located in public libraries, each school, and each district office. In addition, each school board must notify its parents each year regarding its policies on both intra- and interdistrict transfers (state law is not specific as to how districts are to accomplish this).

Pupil Commitment: Local districts are responsible for establishing the length of time to which a student must commit when requesting a transfer.

Ceiling on Transfers: There is no ceiling on the number of students who can depart from a district in a given time period.

Athletes: Transfer students are ineligible to participate in athletic competitions for one year; however, exceptions to this rule are possible.

Funding: The receiving district collects funds monthly based on the transfer student's resident district allotment. It was noted that the state's adoption of open enrollment has not undermined equalization because each district may levy a transfer fee to the parent of each student desiring to transfer to a school in a district other than the student's resident district. In the 1990-91 school year, 22 out of 298 districts (over half of which are in the greater Seattle area) charged a transfer fee. This number is expected to increase when districts submit their annual reports in December.

Transfer fees for these districts range from $200 to $1,391 depending on the levy established by the policy of each school district; in the case of a low income family, each district has the option to waive the fee. The primary purpose of the transfer fee is to offset the difference in property taxes between districts; the fee, however, is the same for every student regardless of the district the student transfers from. It is mandated that all transfer students from the same district pay the fee unless exempted by the receiving district. The fees are collected by each district and sent to the County Treasurer who is, by law, each district's treasurer. There is no state formula per se governing the method that each district uses to determine its transfer fee. The fee can be prorated over the number of days the student attends school in the receiving district. The state does not provide any financial assistance to parents to aid in the payment of the transfer fee. Parents generally pay the fee prior to their student enrolling.

Usage/Reasons

Prior to the 1990 legislation, there were approximately 30,000 interdistrict transfer students; however, with state guidelines ensuring fair application of procedures and selection criteria, a number of districts have chosen not to participate in interdistrict transfers. This has caused the number of transfer students to decrease.

Legislative/Public Expectations

Some legislators hoped that open enrollment would significantly increase parental involvement and that poorly achieving schools would go out of business if they did not improve. Concerns raised by the public concerning open enrollment are: 1) athletic recruiting; 2) poor districts left poorer; and 3) loss of funding. Major concerns of educators were the loss of funding and the ability to maintain programs.

Current Issues

Statute allows parents to transfer their students to another district for reasons such as proximity to child care and the parents' work location. Because these are valid reasons for transferring, the question is raised as to why the parents should have to pay the transfer fee.

WISCONSIN

Overview/History

Legislation was defeated in 1989; however, a limited plan was approved for the school district of Milwaukee in 1990 as a response by the legislature to voluntary desegregation. This limited plan was originally approved as a pilot project until 1995, but the governor vetoed the bill; consequently, there is no ending date for the plan. The plan approved by the legislature mandates that students are only able to transfer to private schools *within* the district.

A plan to desegregate the Milwaukee School District in 1984 resulted in a lawsuit brought by 23 nearby suburban school districts when Milwaukee tried to force them to each take a percentage of Milwaukee's minority students, although the Milwaukee School District paid the suburban districts for each student that transferred to one of the districts. The lawsuit lasted from 1984 to 1987 when a voluntary settlement was reached out of court. The settlement allowed suburban districts to voluntarily accept a percentage or fixed number of minority students without being mandated to participate; however, this participation was not sufficient to meet Milwaukee's desegregation plan. In addition, the suburban districts that did volunteer to participate only agreed to do so from 1987 until June 30, 1993.

Key Components

Transportation: Milwaukee, as one large school district, has always provided transportation for its students whether they attended a public or private school. This has not changed.

State Guidelines: Private schools participating in the plan cannot allow the number of transfer students each accepts to exceed 49% of the tuition-paying student body. The parents of students wishing to transfer apply directly to the private school of their choice.

Each private school must define its capacity and must take all applicants if capacity permits. A student must be accepted even if the school does not offer the program or services necessary to meet the student's needs, as long as the parent understands that a program will not be established.

If the number of applicants exceeds the private school's capacity, random selection occurs (as in a lottery).

Annual Report: No annual report is submitted by the private schools or the Milwaukee School District.

Racial Balance: The current plan is Wisconsin's attempt to control population balances and prevent districts from being charged with violations of civil rights laws.

Methods for Informing Parents: To inform parents, press releases appeared in all the daily and weekly newspapers (English and all minority papers). Each private school is permitted to advertise its involvement in the transfer option. All schools in the district have a list of the private schools that have volunteered to accept transfer students; however, it is not the responsibility of the Milwaukee School District to inform the parents.

Pupil Commitment: Each transfer student is required to commit to one year.

Ceiling on Transfers: A maximum number of 1,000 students can transfer to private schools or the school district.

Athletes: The plan adopted for Milwaukee has not had an impact on athletes' eligibility based on residency because none of the students who transferred were athletes. The state acknowledges that both the private and public schools have their own athletic associations; this could lead to a potential conflict over students' ineligibility.

Funding: Voucher money is mailed directly to the private schools in quarterly installments. Vouchers, each worth $2,446 per student, can be used at any private school in the city.

The surrounding suburban districts agreeing to take a percentage of Milwaukee's minority students are paid quarterly.

Usage/Reasons

The plan was limited to 1,000 transfer students to select an alternative school from the list of private schools that volunteered to accept transfer students (seven out of 19 have agreed to participate in the 1991-92 school year). Students from low income families were the only ones who qualified to transfer.

Legislative/Public Expectations

The legislature has hired an independent researcher to compare transfer students' test scores, attendance records, suspensions/expulsions, and parental involvement with students in the district who remained in public schools. This data has not yet been compiled.

There was mixed public reaction for allowing private schools to receive public funds. Educators were concerned that there was not enough state control over the private schools and there were no guarantees that the plan would work.

Public opinion in the state has become ambivalent, but there has been a great deal of dialogue outside the state.

Current Issues

The NAACP, the Wisconsin Education Association, the Wisconsin Federation of Teachers, and the state's PTA (Parent Teacher Association) have filed a lawsuit against the state because they view the current desegregation plan as a form of segregation, since the private schools already have a higher percentage of minority students than the public schools which they left, and the minority student transfers only increase that percentage. The case is currently before the state Supreme Court and a decision is expected in the 1991-92 school year.

APPENDIX B

In addition to the 10 states that have enacted more formalized open enrollment/choice legislation (prior to spring 1991), many other states have limited or "informal" choice plans. In addition, one state (Massachusetts) just recently enacted their voluntary interdistrict option. In total, six are profiled in this appendix: Arizona, Alabama, Massachusetts, Missouri, Oregon, and Vermont. It should be noted that these states were profiled since they are occasionally included on various national open enrollment/choice "lists."

ARIZONA

Current Statute/Level of Open Enrollment

Although not commonly known, existing Arizona statutes already allow the movement of students between districts and within districts. Arizona Revised Statute (A.R.S.) 15-853 states: The governing board *may* admit children who do not reside in the school district but who reside within the state *upon such terms as it prescribes*. This means that district school boards are under no obligation to admit out-of-district students, but may do so on whatever terms they adopt. Some districts require non-resident students to pay tuition; others simply accept them on a space-available basis. In addition, although not directly stated in law, school districts cannot prevent a child from leaving the district of residence to seek enrollment in another district (note -- within certain districts, the court order of desegregation may prevent students from leaving if it adversely impacts racial balance).

During fall, 1989, the Arizona Department of Education conducted a survey to ascertain the extent to which students within the public school system were attending schools outside their school/district of residence utilizing existing statutory provisions. General results were as follows:

- A total of 12,960 out of approximately 660,000 public school students were enrolled as "non-residents" indicating they were attending a school or district outside of their attendance area.*
- Of the 177 responding districts, 92% (162) permit attendance of non-resident students, and 69% (122) have a formal policy regarding this issue.
- Of the responding districts with more than one school, 80% (74) allow students to transfer between schools in their district.
- Of the responding districts, 23% (38) provide transportation to non-resident students.

** It should be noted that the survey did not distinguish how many of these students were part of "district-arranged transfers" whereby the district does not offer instruction in a certain grade level or program area; and, therefore, arrangements are made for the student to attend another district. It is estimated that over 2,000 students were enrolled in a non-resident district for this reason.*

Arizona Legislative/State-Level Activities

Open enrollment legislation has been reintroduced in Arizona each year since 1987. During 1987 and 1988, the bill passed the House but failed in the Senate. During 1989 and 1990, the bill passed the Senate but failed in the House. During 1991, several draft bills were developed, but no hearings were held. In addition, an initiative has been filed by a group entitled "Parents Advocating Choice in Education" (PACE) in an attempt to place the issue on the 1992 ballot. From 1987 through 1990, the debate focused primarily on open enrollment within the public school system. Recently, the debate has been expanded to include private school issues.

During fall, 1991, the Governor's Task Force on Educational Reform in this state recommended that formal public school open enrollment provisions be enacted, followed by the addition of private schools (both nonsectarian and sectarian) once a set of preconditions have been met within the state. Two key preconditions include the requirement that public schools become decentralized and deregulated, and that increased funding has been provided for the public school system. It was also recommended that private schools choosing to participate must abide by all remaining state and federal laws and regulations.

ALABAMA

Legislation was passed in 1991 to provide parents and students with a greater choice in the kinds of public educational programs available *within the resident district*. This voluntary intradistrict legislation authorizes a district to develop, adopt, and implement a "Schools of Choice" plan for use within its respective school system. This plan can be implemented by: 1) a resolution of the county or city board of education, or 2) a referendum called by a resolution of the county or city board of education and approved by a majority of the voters residing within the geographic jurisdiction of the county or city board of education. All plans must be in full compliance with applicable federal and state constitutional, statutory, and administrative provisions of law.

Once a district adopts a "Schools of Choice" plan by resolution or referendum, it must notify the state superintendent of education, who in turn must submit an annual "Schools of Choice" report prior to August 1 of each year to the State Board of Education. This report must contain a list of every participating district with an accompanying summary of the contents of each particular plan. The state superintendent is responsible for recommending the development, adoption, or implementation of all existing or future "Schools of Choice" plans. Special provisions prevent schools from using the plan to reduce the racial ratio of any school. In addition, the State Board of Education must adopt standards for a mandatory and enforceable attendance policy for all students in public schools, since such policies for schools differ from district to district.

"Schools of Choice" plans may include, but are not limited to: further development of alternative academic programs; vocational schools; fine arts curricula; gifted student programs; post- secondary early option programs; programs such as the Alabama High School for Math and Science and the Alabama School of Fine Arts; and any other programs that improve and enhance education.

MASSACHUSETTS

In June, 1991, legislation was passed that implemented *voluntary interdistrict* open enrollment/choice options for FY 1991-92. Due to the lateness of the bill, only 27 of 426 school districts chose to participate in interdistrict transfers, with the number of participating students totaling 753.

State guidelines do *not* allow 1) a resident district to prevent the transfer of a student; 2) a district to charge a transfer fee; 3) tuitioning of students (as per previous legislation); or 4) discrimination in the admission of any child on the basis of race, color, religious creed, national origin, sex, age, ancestry, athletic performance, physical handicap, special need, academic performance, or proficiency in the English language. In addition, state and local funds follow the student to the receiving district to cover the full cost of educating the student (even if the sending district's cost to educate the student is lower). Currently, the parent is responsible for transporting the student to the school in the receiving district, and no funds are available to reimburse the parent.

Each public school which admits children under the open enrollment/choice legislation is required to report to the state treasurer 1) the number of transfer students; 2) the residence of each student; 3) the annual amount of tuition for each student; and 4) the total tuition owed to the district based on full or partial attendance.

MISSOURI

Missouri law is silent on intra- and interdistrict choice; however, districts have their own local policies regarding transfer students. In 1990, legislation permitting interdistrict choice *for summer school purposes* was enacted.

OREGON

The issue of open enrollment/choice was addressed as part of a major reform bill approved by the legislature in spring, 1991. The adopted open enrollment/choice provisions will be available as an option *only* to those students who require additional support as determined through a new state assessment system (to be developed by FY 1994-95).

Beginning in FY 1994-95, the resident district will be accountable for each student's satisfactory progress toward achieving the state established mastery standards or for finding alternative learning environments (with the concurrence of the student's parents/guardian). If, at any point, a student is not making satisfactory progress toward attainment of the standard at grades three, five, eight, and ten, including the Certificates of Initial Mastery and Advanced Mastery, the school district shall make additional services available to the student that may include, but not be limited to, the following: 1) a restructured school day; 2) additional school days; 3) individualized instruction and other alternative instructional practices; and 4) family evaluation and social services as appropriate. If the student to whom additional services have been made available fails to demonstrate the knowledge and skills required at the mastery level within one year, even though the student would be or is promoted to the next level, *the student shall be allowed to transfer* to another public school in the district or to a public school school in another district *that agrees to accept* the student.

The receiving district counts the student as a resident student for funding purposes and receives an amount equal to the district expenses from its local revenues for each student in average daily membership, payable by the resident district in the same year. In addition, any state and federal funds the attending district is entitled to also follow the student.

VERMONT

Legislation established almost 100 years ago allowed only those parents within school districts *lacking a high school facility* to 1) choose a state approved nonsectarian private school anywhere in the state, another state, or outside the country; or 2) choose a public school anywhere in Vermont or an adjoining state. This original statute still exists today, but it has been expanded to cover areas *lacking an elementary school*.

Elementary Schools

Towns lacking an elementary school may vote to pay tuition for their resident students to attend one or more public schools in neighboring school districts or, in restricted instances, nonsectarian private schools. In addition, the electorate may authorize the school board to pay tuition to approved independent (private) schools if, upon request of a pupil's parent or guardian, the board determines that the pupil's educational interests can be better served at the independent school.

Tuition for elementary pupils shall be paid by the district in which the pupils reside. The tuition

paid to a public elementary school shall be at a rate not greater than the calculated net cost per elementary pupil in average daily membership in the receiving school district for the year of attendance. The tuition paid to an approved nonsectarian private school shall not exceed the lesser of 1) the average announced tuition of Vermont union elementary schools for the year of attendance, or 2) the tuition charged by the public elementary school attended by the greatest number of the district's pupils.

High Schools

A school board lacking a high school facility has two options: 1) it can designate a state-approved nonsectarian private school by the vote of the electorate (and acceptance by the private school); or 2) parents in that district can choose any public or approved nonsectarian private school to which the students may be tuitioned. If the designated school option is utilized, then the school board pays the full tuition fee for each student. The school board directly pays the approved school a tuition fee not to exceed $5,450 (FY 1991-92) to a private school or the full amount charged by a public school. Once a school board designates a state-approved nonsectarian private school as its high school, then the parents no longer have a choice as to where their students attend (unless they want to pay the tuition fee themselves).

Tuition for high school pupils shall be paid by the district in which the pupils reside. Except as otherwise provided for vocational students, the district shall pay the full tuition charged its pupils attending 1) an approved public high school in Vermont or an adjoining state; 2) a public or nonsectarian private school in Vermont functioning as an approved area vocational center; or 3) a nonsectarian private school. For all other private schools, the school district shall pay an amount not to exceed the average announced tuition of Vermont union high schools for the year of attendance or any higher amount approved by the electorate at an annual or special meeting called for that purpose.

A "private nonsectarian school meeting public school standards" refers to a private nonsectarian school in Vermont that applies to the state board for public school approval and meets those standards. If one of these schools becomes a designated school for a district and desires to raise its tuition, it shall notify the school board of the sending district and the commissioner of the proposed increase on or before February 1 of any year; such increases shall not become effective without the notice and not until the following school year.

Special Needs Students

To be eligible to receive public funds for special needs students, the private schools must meet all the standards required of a public school. A designated, state-approved private nonsectarian school may establish a separate tuition for one or more special educational programs. No such tuition shall be established unless the state board has by rule defined the program as one which may be funded by a separate tuition. The amount of tuition shall reflect the net cost per pupil in the program. The announcement of tuition shall describe the special educational services included or excluded from coverage. Tuition for part-time students shall be reduced proportionally.

Transportation

Each school district has the option to provide transportation to its students. If transportation is provided, the district is reimbursed by the state in its funding formula. Each district may also reimburse a parent or the receiving district for transportation costs.

Annual Reports

No annual reports are submitted by state-approved private schools to the State Board of Education, but such schools are subject to periodic reapproval.

District Alternatives

As an alternative, districts may join with one or more adjoining districts to establish a union school district. A union school district permits individual school districts to build or operate a public elementary or high school (or both) to service the educational needs of its students. The school is located in one of the school districts while sharing the funding for servicing and maintenance. Each district is assessed a share of the costs based on the number of its students enrolled.

Number of Participants

This legislation applies to approximately one-third of the state's 279 school districts to one degree or another and affects thousands of students.

APPENDIX C

States enacting legislation concerning open enrollment/choice programs are concerned with constitutional issues if sectarian schools are to be included as part of the choice option. The following legal briefing addresses the relevant provisions in the U.S. and Arizona Constitutions.

LEGAL BRIEFING SUMMARY:
CONSTITUTIONAL ISSUES REGARDING SECTARIAN SCHOOLS
AS AN OPEN ENROLLMENT OPTION

Prepared for the Arizona Governor's Task Force on Educational Reform
August 12, 1991

ISSUES

1. Whether a state tax deduction for primary and secondary public and private school expenses would be constitutional under the U.S. and Arizona Constitutions.

2. Whether a school expense "voucher" system whereby a student and his parents could "spend" the voucher at the participating primary or secondary public or private school of their choice would be constitutional under the U.S. and Arizona Constitutions.

BRIEF ANSWER

Although school expense tax deduction, voucher, or other such subsidy systems could be subject to a number of state and federal constitutional challenges, such systems are constitutional, provided that the enabling statute -- both on its face and as applied: (1) has a legitimate secular purpose; (2) does not have the primary effect of advancing religion; and (3) does not create an "excessive entanglement" with religion via comprehensive and continuing state surveillance of religious instruction. A review of the relevant judicial authorities reveals that the critical issues are avoidance of subsidies for purely religious instruction and "excessive entanglement" with religion. A facially-neutral subsidy statute would likely survive challenges on state and federal establishment clause grounds.

ANALYSIS OF AUTHORITIES

Relevant Provision in the U.S. and Arizona Constitutions

A number of state and federal constitutional provisions are potentially applicable to this discussion.

The U.S. Constitution

The First Amendment of the U.S. Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The two elements of this provision are referred to as the Establishment Clause and Free Exercise Clause, respectively.

> The Fourteenth Amendment of the U.S. Constitution also provides, in pertinent part:
> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

As discussed below, the Equal Protection Clause of the 14th Amendment is also potentially applicable to the issues presented here.

The Arizona Constitution

Relevant portions of the Arizona Constitution include Article II, §12:

> . . . No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or for the support of any religious establishment . . .

Article IX, §10 of the Arizona Constitution provides, in pertinent part, that:

> . . .[n]o tax shall be laid or appropriation of public money made in aid of any church or private or sectarian school . . .

Article XI ("Education") also provides for the establishment and administration of a public school system by the Arizona Legislature, State Board of Education and State Superintendent of Public Instruction. Article XI could be read restrictively to limit state authority in the administration of private or sectarian schools. This provision could arguably undermine the constitutionality of state involvement in the administration of private schools which receive funding through vouchers or tax deductions.

The language of the Arizona constitution, Article II, §12 and Article IX, §10, is not necessarily incompatible with U.S. Supreme Court decisions on government aid to religion. Consider for example, Justice Black, writing for the Supreme court in the 1947 case of Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L. Ed. 711 (1947):

> The "establishment of religion" clause of the First Amendment means that at least this: Neither a state nor the Federal government can set up a church. Neither can pass laws which aid one religion, aid all religion, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach ar practice religion. Neither a state nor Federal government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson the clause against the establishment of religion by law was intended to erect "a wall of separation between church and State."

Id., 330, U.S. at 15-16, 91 L.Ed. at 723.

In the absence of binding Arizona law to the contrary, we should expect the relevant portions of the Arizona Constitution to be interpreted consistently with the United States Constitution and the rulings of the U.S. Supreme Court. Accordingly, for purposes of this analysis, the issues presented here will be examined as if the Arizona and U.S. Constitutions were identical in this area. [Note: A more detailed discussion of specific issues raised under the Arizona constitution is contained in a separate memorandum].

The Lemon Test

Several dozen different school expense tax deduction, voucher and subsidy schemes have been subject to constitutional scrutiny over the last twenty years. As a statistical matter, the majority of these have been upheld on constitutional grounds. Of the legislation which has been found unconstitutional, most of these statutes have the purpose or direct effect of providing subsidies for private or religious instruction, sometimes even to the complete exclusion of funding for public education.

Since 1971, the U.S. Supreme Court has analyzed each school expense subsidy statute under a three-part test articulated in Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L.Ed.2d 745 (1971). To determine the constitutionality of a challenged statutory scheme, the Lemon test requires an examination of three things:

(1) Whether the statute has a legitimate secular (i.e., non-religious) purpose;

(2) Whether the statute has the primary effect of advancing religion; and

(3) Whether the statute creates "an excessive entanglement" with religion (i.e., "comprehensive, discriminating, and continuing state surveillance . .").

Id., 403 U.S. at 612-613, 29 L.Ed.2d at 755.

Lemon v. Kurtzman provides the framework for the constitutional analysis of any school expense subsidy statute, including those which create state tax deductions or voucher systems in this area.

More recently, the Supreme Court has applied the Lemon test in two ways to the challenged statute: First, applied. Bowen v. Kendrick, 487 U.S. 589, 600-602, 108 Sup. Ct. 2562, 101 L.Ed 2d 520, 534-536 (1988). This effectively adds two additional and significant steps to the Lemon analysis: First, whether the statute as applied advances religion (i.e. whether the funding flows neutrally to both public and private organizations as the result of the independent choices of numerous individual beneficiaries), and second, whether the statute as applied creates an excessive entanglement with religion by funnelling aid to "persuasively sectarian" institutions. Minnesota Federation of Teachers v. Nelson, 740 F. Supp. 694, 708, 714-715 (D. Minn. 1990).

Given Minnesota Federation of Teachers and related cases, there is no reason that a properly designed and administered school voucher system could not survive constitutional scrutiny under the Lemon/Bowen test. Obviously, a voucher system would require a greater degree of interaction between the state and private schools than under a tax deduction scheme in terms of processing the vouchers and related administration. However, there is nothing in the voucher system which requires any substantive state "surveillance" of the sectarian nature of institutions receiving aid beyond that required for a tax deduction or any other subsidy system. In this regard, additional constitutional objections to a voucher system may be more illusory than real; that is, that the voucher create the appearance of state-financed support of private or even religious institutions because sooner or later, the state must reimburse these institutions for the value of the voucher they receive. In reality, this may be more of a political concern than a legal or constitutional one.

Constitutionality of School Expense Subsidy Systems Under the Equal Protection Clause

While it appears that virtually every significant constitutional challenge to state tax deductions, vouchers or other subsidies for educational expenses has been made on First Amendment Establishment Clause grounds, some commentators have suggested that such plans may also run afoul of the Equal Protection clause since vouchers may be a means of state encouragement of private discrimination along racial, economic or intelligence-level grounds. 24 Stanford Law Review 687, 688, "Education voucher" the Fruit of the Lemon Tree." However, an overview of the law in this area reveals that is would be difficult to successfully challenge a school expense subsidy statute on this basis.

Proponents of a school voucher statute should at most be required to establish that the statute bears a "fair and substantial relation" to " important government objectives" (i.e., the "mere rationality plus" test). A statute which can survive the Lemon/Bowen analysis outlined above (legitimate secular interests while avoiding the advancement of, or excessive entanglement with, religion) should also represent a fair and substantial relation to important government objectives. Accordingly, it appears unlikely that a facially-neutral school expense subsidy statute would be deemed unconstitutional on Equal Protection grounds.

CONCLUSION

A school expense tax deduction or voucher statute should survive constitutional scrutiny under the five-part Lemon/Bowen test, which asks (1) whether the statute on its face has legitimate secular purpose; (2) whether the statute on its face has the primary effect of advancing religion; (3) whether the statute creates "an excessive entanglement" with religion via comprehensive and continuing state surveillance; (4) whether the statute as applied advances religion (i.e., whether the funding flows neutrally to both public and private organizations as the result of the independent choices of individual beneficiaries); and (5) whether the statute as applied creates an excessive entanglement with religion by funneling aid to "pervasively sectarian" institutions.

A facially-neutral tax deduction or voucher system can be designed to meet the criteria set forth in Lemon and Bowen. Such a statute could survive constitutional attack under the Establishment Clause of the First Amendment and other federal and state constitutional provisions.

APPENDIX D

Minnesota's Outcomes Based Charter Schools provide a "new" choice concept in that any certificated teacher or groups of certificated teachers can establish and operate a school. This innovative method of providing choice to teachers will be of interest to other states as the open enrollment/choice option is debated.

Minnesota's Outcomes Based "Charter" Schools – 1991

A "new" choice concept of "charter" schools has just been authorized by the Minnesota legislature. Beginning in fall, 1991, any certified teacher or groups of certified teachers can establish and operate a school. The concept is being referred to as "choice for teachers" in that it will provide an opportunity for teachers to run their own schools. The school will be exempted from many state requirements; however, it must first obtain a "sponsorship" from an existing school board which agrees to oversee the "outcomes" of the school. Summary provisions, as extracted from law, are as follows:

- Any certified teacher or group of teachers is allowed to establish/operate an "outcomes based school."

- These teachers must obtain a "sponsorship" (contract) from a school board for up to a three-year period of time whereby that board agrees to review the outcomes of the school (each school board is allowed to sponsor no more than two schools). The contract must contain at least the following:

    - a description of the school's program which will carry out one or more of the following: improve student learning, increase learning opportunities for pupils, encourage the use of different and innovative teaching methods, create different and innovative forms of measuring outcomes, establish new forms of accountability, and/or create professional opportunities for teachers;
    - specific outcomes pupils are to achieve;
    - admission policies and procedures;
    - management and administration of the school; and
    - program and financial procedures which meet the requirements of this act.

- Final approval must be obtained from the State Board (the Board can authorize no more than eight such schools in the state). The State Board must appoint an "advisory committee" to review the charter school proposals.

- The school shall organize as a cooperative or a nonprofit corporation and must hold an election to establish the school's "board of directors" (certified teachers from each school must represent the majority of the board).

- The Board of Directors has authority to hire/fire all personnel (note: teachers must be certified) and make decisions regarding curriculum, budgeting, and school operations.

- These outcomes based charter schools are ***exempt from most state laws and board rules except*** generally as follows:

    - must meet health and safety rules
    - must be located in Minnesota
    - must be nonsectarian
    - must provide a "comprehensive" program for at least one grade or age group
    - must comply with special education laws
    - must comply with "pupil fair dismissal act"
    - cannot charge tuition beyond the state voucher
    - are subject to financial audits

- Admission requirements ***may*** be limited to:
  - pupils within an age group or grade level
  - pupils eligible to participate in Minnesota's "high school incentives program" -- at-risk youth and dropouts
  - pupils with a specific affinity for the school's teaching methods, learning philosophy, or special subjects (e.g., magnet school concept)
  - residents of a specific geographic area as long as the school reflects the racial and ethnic diversity of that area.

- With the above exceptions, the school ***must accept all*** students (including special needs students) who submit a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, pupils must be accepted by lot.

- Finance Issues
  - State funds (both operations and capital) are to be distributed directly to the school as if it were a school district. The amount for each pupil unit is the state average for each "weighted" student unit.
  - The school may lease space from any school board or other public or private nonprofit nonsectarian organization. State funds may not be used to purchase land or buildings. Non-state sources may be used for this purpose.
  - The school ***cannot*** levy for additional funding.
  - Transportation ***must*** be provided by the district in which the school is located for those students residing in that district. Transportation ***may*** be provided by the district for pupils residing in a different district.

- Provisions are included whereby school boards must grant an extended leave of absence for current teachers who wish to work in an outcomes based school (serves as a safeguard for teachers). During the leave, the teacher may continue to aggregate benefits and credits in the teachers' retirement fund by paying both the employer and employee contributions.

- The sponsoring school board may terminate the contract or not renew the contract upon any of the following grounds (note: an informal hearing must be held):
  - failure to meet the requirements for pupil performance as contained in the contract
  - failure to meet standards of fiscal management
  - for violations of law, and/or other good cause

- The state Department of Education is required to disseminate information to the public on how to form and operate an outcomes based school and how to access such a school.

Morrison Institute for Public Policy

Established in 1981 through a gift from the Morrison family of Gilbert, Arizona, Morrison Institute for Public Policy is an Arizona State University (ASU) resource for public policy research, expertise, and insight. The Institute conducts research on public policy matters, informs policy makers and the public about issues of importance to Arizona, and advises leaders on choices and actions. A center in the School of Public Affairs (College of Public Programs), Morrison Institute helps make ASU's resources accessible by bridging the gap between the worlds of scholarship and public policy.

The Institute's primary functions are to offer a variety of services to public and private sector clients and to pursue its own research agenda. Morrison Institute's services include policy research and analysis, program evaluation, strategic planning, public policy forums, and support of citizen participation in public affairs. The Institute also serves ASU's administration by conducting research pertinent to a variety of university affairs.

Morrison Institute's researchers are some of Arizona's most experienced and well known policy analysts. Their wide-ranging experiences in the public and private sectors and in policy development at the local, state, and national levels ensure that Morrison Institute's work is balanced and realistic. The Institute's interests and expertise span such areas as education, urban growth, the environment, human services, and economic development.

The Institute's funding comes from grants and contracts from local, state, and federal agencies and private sources. State appropriations to Arizona State University and endowment income enable the Institute to conduct independent research and to provide some services pro bono.

Morrison Institute for Public Policy
School of Public Affairs
Arizona State University
Tempe, Arizona 85287-4405
(602) 965-4525
(602) 965-9219 (fax)

Morrison Institute for Public Policy
School of Public Affairs
Arizona State University
Tempe, Arizona 85287-4405
(602) 965-4525

BEST COPY AVAILABLE